

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES***

Applicant: Williams et al.

Title: ONLINE MORTGAGE QUALIFICATION AND APPLICATION SYSTEM
AND PROCESS

Appl. No.: 09/593,106

Filing Date: 06/13/2000

Examiner: Subramanian, N.

Art Unit: 3624

Conf. No.: 7565

REQUEST FOR REHEARING UNDER 37 CFR §41.52(a)

Mail Stop APPEAL BRIEF – PATENTS
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Request for Rehearing is being filed under the provisions of 37 C.F.R. § 41.52(a) responsive to the Decision of the Board of Patent Appeals and Interferences mailed March 27, 2007 (“the Board Decision”).

I. INTRODUCTION

Although the Board has not characterized it as such, Appellant respectfully submits that the Board Decision sets forth new grounds of rejection. Section II below identifies examples of new reasoning contained in the Board Decision which constitute the new grounds of rejection. Section III below responds to the new reasoning identified in Section II. Appellant could not have previously raised the arguments below because they are responsive to grounds for rejection articulated for the first time in the Board Decision. Appellant respectfully requests that the Board reverse all claim rejections and indicate that a Notice of Allowance respecting all pending claims should be issued.

II. THE BOARD DECISION SETS FORTH NEW GROUNDS OF REJECTION

Rather than adopt the reasoning articulated by the Examiner, the Board Decision articulates new reasoning in several key areas. Set forth below are three examples of the new reasoning articulated in the Board Decision. Although Section III below raises new arguments, Appellant is permitted to raise such new arguments under 37 CFR 41.42(a)(3) because they are responsive to the new reasoning set forth in the new grounds of rejection as described below.

1. First, the Board Decision now relies on Walker rather than “Official Notice” in connection with certain claim limitations in claim 1. As such, the specific prior art basis for the rejection in the Board Decision is one that Appellant has not had an opportunity to respond to previously. In particular, in connection with the limitations in claim 1 relating to identifying a plurality of mortgage products using underwriting guidelines of a secondary mortgage market purchaser, the Board Decision states as follows:

The appellants argue that Walker does not disclose that the mortgage products are approved, i.e., are identified using an automated underwriting engine that generates underwriting recommendations based at least in part on preselected underwriting guidelines of a secondary mortgage market purchaser (Br. 10-11; Reply Br. 3-4). The monthly income, credit bureau history, credit score and debt

burden considered by Walker (col. 6, ll 10-15; col. 8, ll 28-34) are guidelines used by mortgage underwriters in approving mortgage products for borrowers.

(BD at 4.) In contrast, the Examiner made a finding that these features were not taught by Walker and found it necessary to rely upon Official Notice to substantiate the rejection:

Walker does not explicitly teach... using at least in part underwriting guidelines of a secondary mortgage market purchaser.

Official Notice is taken that these steps are well known in the art... Using the underwriting guidelines of a secondary mortgage market purchaser increases the likelihood of selling the loan to a secondary mortgage market purchaser and provides funds for the lender to make new or additional loans.

(EA at 4.) As detailed below, the Board Decision, in citing to Walker instead of Official Notice, still fails to address the fundamental deficiency in the Examiner's reasoning as pointed out by Appellant. That is, Walker does not disclose that the mortgage products are identified based at least in part on underwriting guidelines of a "secondary mortgage market purchaser."

2. Second, the Board Decision cites to different features disclosed by Walker in connection with certain other claim limitations. As such, the particular combination of elements cited in Walker for the rejection in the Board Decision is one that Appellant has not had the opportunity to respond to previously. For example, in connection with the limitations in claim 1 relating to the mortgage products being "approved" when they are presented to the borrower for comparison and selection, the Board Decision states as follows:

The appellants argue that their mortgage products are approved when they are presented to the borrower for comparison and selection, whereas Walker requires further online credit processing for a final decision (Reply Br. 4-5). Walker provides conditional approval based upon underwriting guidelines such as credit bureau history, credit score and debt burden, subject to required verification (col. 6, ll. 10-15).

(BD at 4.) In contrast, whereas the Board Decision relies on the providing of a "conditional approval" in connection with these limitations of claim 1, the Examiner had relied upon the providing of a "credit qualified offer":

In response to applicant's argument that Walker does not teach the step of "providing approval status and customized rate information for each of the plurality of approved mortgage products for borrower comparison and selection", the Examiner respectfully disagrees. Walker teaches the step of recommending to applicants specific products with pre-determined credit qualified offer amounts (See Walker Column 2 lines 40-43).

(EA at 10.) As detailed below, the "conditional approval" is generated at a later point in the credit approval process disclosed by Walker, after the borrower has already selected a "credit qualified offer." In other words, the "conditional approval" taught in Walker does not result in credit products being "approved" at the time they are presented for borrower comparison and selection as required by the claims.

3. Third, the Board Decision contains new reasoning relating to the interpretation of the term "approved" in claim 1 in view of teachings in Appellant's specification at pages 12-13, and the Appellant has not had the opportunity to respond to this reasoning previously:

The Appellants argue that their mortgage products are approved when they are presented to the borrower for comparison and selection, whereas Walker requires further online credit processing for a final decision (Reply Br. 4-5). Walker provides conditional approval based upon underwriting guidelines such as credit bureau history, credit score and debt burden, subject to required verification (col. 6, ll. 10-15). Similarly, the applicant's claimed system and method provide a likelihood of approval for a mortgage loan, subject to final approval after an online loan application process (specification, pages 12-13). Final loan approval clearly cannot be provided by the appellants' claimed system and method in cases where the applicant is anonymous (specification, page 12). Thus, the patentable distinction argued by appellants does not exist.

(BD at 4.) Thus, the Board Decision appears to consider the discussion of the prequalification calculator 20 at pages 12-13 to be relevant in interpreting the claims, which recite an "underwriting engine" that is used to identify a plurality of "approved" mortgage products. However, as discussed in greater detail below, the Appellants' specification discloses both a probable qualification calculator 20 and an underwriting engine 24 (see, e.g., FIG. 2), and it is clear from Appellant's specification that the two are not the same thing and that only the underwriting engine generates "underwriting recommendations" identifying "approved"

mortgage products. Any discussion of the probable qualification calculator 20 is irrelevant to the interpretation of how the “underwriting engine” identifies “approved” mortgage products in the claims.

III. THE NEW REASONING IN THE BOARD DECISION IS FLAWED AND THE EXAMINER’S REJECTIONS OF THE CLAIMS SHOULD BE REVERSED

Appellants’ arguments as set forth in the Appeal Brief and the Reply Brief are hereby incorporated by reference.

The Board Decision sets forth various new reasoning why Walker teaches the claim limitations relating to providing approval status information for each of a plurality of “approved” mortgage products. Appellant respectfully submits, however, that the new reasoning is flawed and that Walker does not disclose or suggest these features. Accordingly, the Examiner’s rejection of the claims should be reversed.

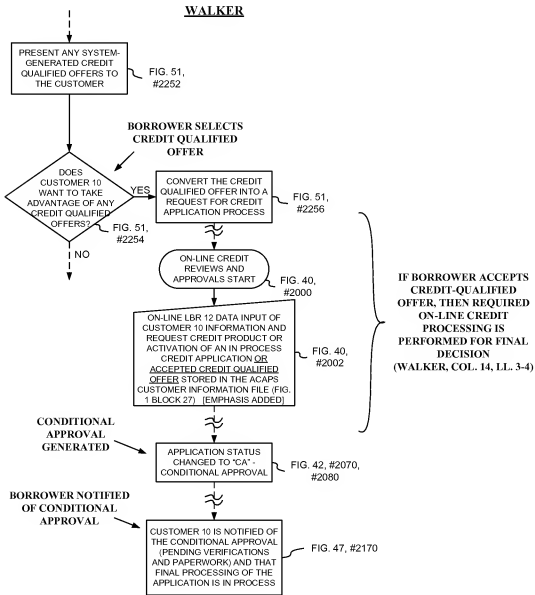
A. THE “CONDITIONAL APPROVAL” TAUGHT IN WALKER DOES NOT RESULT IN A CREDIT PRODUCT BEING “APPROVED” AT THE TIME IT IS PRESENTED AS PART OF A CREDIT QUALIFIED OFFER

The Board Decision states as follows:

The appellants argue that their mortgage products are approved when they are presented to the borrower for comparison and selection, whereas Walker requires further online credit processing for a final decision (Reply Br. 4-5). Walker provides conditional approval based upon underwriting guidelines such as credit bureau history, credit score and debt burden, subject to required verification (col. 6, ll. 10-15).

(BD at 4.) Applicant respectfully submits that the Board is confusing the “conditional approval” with the “credit qualified offer” cited by the Examiner. The “conditional approval” is generated at a later point in the credit approval process disclosed by Walker, after the borrower has already

selected a “credit qualified offer.” This is shown in the FIGURE below, which is a simplified view combining elements of FIGS. 40, 42, and 51 in Walker.¹



¹ In the Figure, while text inside the flowchart shapes has been reproduced from Walker, text outside the flowchart shapes has been added by Appellant.

As shown in the FIGURE, once an applicant selects to accept a credit qualified offer for an additional credit product (block 2254), the credit qualified offer is converted into a request for credit (block 2256). In FIG. 51, if the applicant wants to accept any offers, then the process proceeds to the beginning of the credit process at block 2000 in FIG. 40. As described in the Walker specification:

If the applicant wants to accept any of the offers (Yes branch from block 2252), the credit qualified offer will be converted into a request for credit and will then require on-line credit processing for final decision assignment (block 2256).

(Walker, col. 13, ll 67 to col. 14, ll 4) (emphasis added). The start of the on-line credit processing is at block 2000 in FIG. 40. (Walker, col. 13, lines 3-5.) In the subsequent block 2002, data entry for, inter alia, an “accepted credit qualified offer” is shown. Thus, credit qualified offers go through the essentially same processing in FIGS. 40-42 as any other credit product offered to an applicant. In FIG. 42, only after various credit processing has been performed is the status of the accepted credit qualified offer changed to “conditional approval.” The change in status is shown at blocks 2070 and 2080, both of which recite as follows:

Application Status Changed to “CA” – Conditional Approval

Finally, the borrower is notified of the conditional approval at block 2170, which recites as follows:

Customer 10 is notified of the Conditional Approval (Pending Verifications and Paperwork) and that Final Processing of the Application is in Progress

Thus, in Walker, the credit products are not “approved” credit products at the time of presentation to the borrower for comparison and selection. The discussion concerning the “conditional approval” in the Board Decision does not alter this conclusion, because the “conditional approval” does not happen until (1) after the credit qualified offer has been presented to the borrower, (2) after the borrower has made a selection of the credit qualified offer, and (3) after additional credit processing has occurred. This is a far cry from the claimed

invention, in which the approval status information is provided at the same time as other information (e.g., customized rate information) for borrower comparison and selection of an approved mortgage product.

Appellant's specification uses the term "approved" in accordance with its common usage in the mortgage industry. Appellant respectfully submits that a person of ordinary skill in the art would not consider the credit qualified offer in Walker to be an offer of an "approved" loan product as the term "approved" is commonly understood in the mortgage industry. The credit processing that occurs between blocks 2002 and blocks 2070/2080 precludes any such interpretation.²

B. THE BOARD DECISION'S RELIANCE ON THE SPECIFICATION'S TEACHINGS CONCERNING THE PROBABLE QUALIFICATION CALCULATOR IN INTERPRETING THE MEANING OF THE TERM "APPROVED" IS FATAL FLAWED

The Board Decision also relies upon Appellants specification in support of its conclusion that Walker discloses providing "approved" credit products for borrower comparison and selection. However, this reliance is misplaced. In particular, the Board Decision states as follows:

The Appellants argue that their mortgage products are approved when they are presented to the borrower for comparison and selection, whereas Walker requires further online credit processing for a final decision (Reply Br. 4-5). Walker provides conditional approval based upon underwriting guidelines such as credit bureau history, credit score and debt burden, subject to required verification (col. 6, ll. 10-15). Similarly, the applicant's claimed system and method provide a likelihood of approval for a mortgage loan, subject to final approval after an online loan application process (specification, pages 12-13). Final loan approval clearly cannot be provided by the appellants' claimed system and method in cases

² While not believed to be necessary, Appellants would be willing to amend the claims to more precisely define the term "approved" in accordance with its industry meaning. If the Board deems that such an amendment may facilitate allowance of the application, the Appellants respectfully request that the Board indicate as such in its decision on Rehearing and remand the application to the Examiner.

where the applicant is anonymous (specification, page 12). Thus, the patentable distinction argued by appellants does not exist.

(BD at 4.) Thus, the Board Decision appears to consider the discussion of the prequalification calculator 20 to be relevant in interpreting claim 1, which recites an “underwriting engine” that is used to identify a plurality of “approved” mortgage products. This is just plain wrong. The Appellants’ specification discloses both a probable qualification calculator 20 and an underwriting engine 24 (see, e.g., FIG. 2), and it is clear from Appellants’ specification that the two are not the same thing and that only the underwriting engine generates “underwriting recommendations” identifying “approved” mortgage products.

The probable qualification calculator 20, on the one hand, is a self-assessment tool that a borrower may use at its option prior to proceeding with a loan application:

Once enticed into accessing the loan originator’s web site (step 52), the potential borrower is given the option of proceeding immediately with an online loan application or first determining his/her likelihood of being approved for a loan (decision 54). If the borrower opts to first ascertain the likelihood of being approved for a loan, system 10 preferably provides the potential borrower with an exploratory, self-assessment tool driven by probable qualification calculator software 20, as discussed in greater detail hereinafter.

(Specification, section [0032]).³ The probable qualification calculator is used to predict the operation of the underwriting engine 24 (anonymously and free of charge). However, the specification is clear that the probable qualification calculator 20 is only used for self-assessment and is not used once the borrower has decided to proceed with a loan application:

The probable qualification process ends when the probable qualification determination is presented to the potential borrower in the form of a useful and readily understandable percentage chance of approval which can be easily and meaningfully compared against determinations made for other potential available

³ See also section [0034] (“Generally speaking, from the perspective of a potential borrower, there are distinct benefits associated with having probable qualification calculator 20 available for self-assessment purposes prior to undergoing a full online loan approval process.”) (emphasis added). Citations to the specification are given with respect to the substitute specification filed May 25, 2004.

loan products to permit the potential borrower to make an informed loan decision (display 140, or 142, or 144). It should be understood that the estimated probabilities for approval generated by calculator 20 closely approximate actual approval rates, thereby giving potential borrowers an accurate assessment of their likelihood of approval should they decide to proceed with the loan application.

(Specification, section [0076]) (emphasis added). The underwriting engine 24, on the other hand, is used during the loan application process to generate underwriting recommendations:

If the borrower chooses to apply for a loan, the loan originator makes a request for an underwriting decision. In response to such request, system 10, through underwriting engine 24, will provide to the loan originator an underwriting recommendation, lender and borrower findings, and a borrower/product specific interest rate as described in greater detail hereinafter.

(Specification, section [0088].) Thus, the specification is clear that underwriting recommendations are generated by the underwriting engine 24, not the probable qualification calculator 20. The specification is also clear that it is the underwriting engine 24, and not the probable qualification calculator 20, that identifies multiple approved mortgage products:

Referring back to Fig. 14a, once the underwriting findings for a specific selected product are presented to the loan originator, underwriting engine 24 repeats the foregoing process to determine all approved products for the borrower until all such products have been underwritten (step 232). It should be appreciated that this places at the borrower's fingertips a valid, borrower-specific interest rate quote for all loan products for which the borrower has been approved (e.g., whether a 30 year fixed rate mortgage loan, a 15 year fixed rate loan, or other loan product) so that the borrower has a complete range of approved products with associated interest rates to select from.

(Specification, section [0107].) Accordingly, any reliance on the portions of the specification discussing the probable qualification calculator 20 is misplaced. The probable qualification calculator 20 is irrelevant to the interpretation of how the "underwriting engine" identifies "approved" mortgage products in the claims.

C. WALKER DOES NOT DISCLOSE OR SUGGEST IDENTIFYING “APPROVED” MORTGAGE PRODUCTS BASED ON THE UNDERWRITING GUIDELINES OF A “SECONDARY MORTGAGE MARKET PURCHASER”

Finally, the borrower in Walker is not provided with a plurality of approved mortgage products that are identified as being “approved” based on the underwriting guidelines of a “secondary mortgage market purchaser.” In connection with these limitations, the Board Decision states as follows:

The appellants argue that Walker does not disclose that the mortgage products are approved, i.e., are identified using an automated underwriting engine that generates underwriting recommendations based at least in part on preselected underwriting guidelines of a secondary mortgage market purchaser (Br. 10-11; Reply Br. 3-4). The monthly income, credit bureau history, credit score and debt burden considered by Walker (col. 6, ll 10-15; col. 8, ll 28-34) are guidelines used by mortgage underwriters in approving mortgage products for borrowers.

(BD at 4.) Notably missing in the Board Decision is any discussion of secondary mortgage market purchasers. Mortgages are typically underwritten by lenders consistent with their own underwriting guidelines. Mortgages are often also underwritten by lenders in accordance with the underwriting guidelines of a secondary mortgage market purchaser. Both sets of underwriting guidelines may be applied to the same set of loan application data, such as monthly income, credit bureau history, credit score and debt burden.⁴ However, these are different sets of underwriting guidelines developed by different entities, and the Board Decision appears to fail to appreciate this distinction. In Walker, the disclosure that monthly income, credit bureau history, credit score and debt burden are used in the approving credit products for borrowers is irrelevant. It is to be expected. The issue is whether the credit products are underwritten using the underwriting guidelines of a secondary mortgage market purchaser. Appellant respectfully submits that there is no disclosure or suggestion of this feature in Walker.

⁴ Appellants note that monthly income, “credit bureau history,” “credit score” and “debt burden” are, strictly speaking, not themselves underwriting guidelines as the Board Decision implies. Rather, these parameters are data against which underwriting guidelines are applied.

In short, Walker does not disclose or suggest providing information regarding approval status and the customized interest rate for presentation to the borrower for each of a plurality of approved mortgage products for borrower comparison and selection. Accordingly, the Examiner's rejection of the claims should be reversed.

IV. CONCLUSION

In view of the foregoing, the Appellant submits that claims 1, 4-8, 10, 28, 31-33, 35, 53 and 54 are not properly rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,088,686 (Walker) and are therefore patentable. The Appellant also submits that claims 2, 11-14, 16, 23, 25, 26, 29, 36-39, 41 and 55-58 are not properly rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,088,686 (Walker.) in view of U.S. Patent No. 6,029,149 (Dykstra) and are therefore patentable. Accordingly, the Appellant respectfully requests that the Board reverse all claim rejections and indicate that a notice of allowance respecting all pending claims should be reissued.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741.

Respectfully submitted,

Date 5/25/07

By /David G. Luetggen/

FOLEY & LARDNER LLP
Customer Number: 34099
Telephone: (414) 297-5531
Facsimile: (414) 297-4900

David G. Luetggen
Attorney for Appellant
Registration No. 39,282